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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,426	01/30/2002	Mark L. Mathis	1931-11-3	5095

7590

10/14/2003

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EXAMINER

BARRETT, THOMAS C

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,426

Applicant(s)

MATHIS ET AL.

Examiner

Thomas C. Barrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed July 28, 2003 have been fully considered but they are not persuasive.

Regarding the Applicant's argument towards Langberg et al.: Langberg et al. does in fact disclose a fixed length connecting member (**58**, not 56 -Fig. 2 and p 17, lines 15-16). This "support" or "elongate body" (p 7, lines 20-24), has ends that serve "as an anchor" (52 and 42). In addition "the proximal extension" of the forming element of Langberg et al. (64) can act as a tether.

Regarding the Applicant's argument towards Solem et al.: Figs. 2 and 3 of Solem et al. discloses the fixed length connecting member comprising a spring having a maximum length (Fig. 3). The prior office action should have cited ref. 10, not Fig. 10. The Solem et al. device would have a second increased radius of curvature if the second anchor were displaced proximally due to the increased tension. Therefore the Solem et al. device meets the structural limitations of the claims. Furthermore, in view of the specification (Fig. 6 for instance) a spring having a maximum length can have a fixed length. If the applicant were to argue this view, it may result in a 112 second paragraph rejection of claims 6, 13, and 24.

Regarding the Applicant's argument towards Solem et al.: The term "deployable" is functional. Pai et al. inherently discloses an anchor that is deployable, which can permit another anchor to be displaced, thus creating tension.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 7, 8, 14, 19-32 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Langberg et al. Langberg et al. discloses a device comprising a first distal anchor and second proximal anchor (p 7, lines 9-11) connected to each other by a fixed length flexible connecting member (58) (p 17, lines 15-16). The connecting member can comprise a "bottomed out" spring (p 18, lines 10-16). A tether (64) extends through a catheter lumen (p 18, lines 19-21).

Claims 1-6, 8-13, 15, 17, 33-37, 39 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by Solem et al. Solem et al. discloses a device comprising a first distal anchor and second proximal anchor (Fig. 10) connected to each other by a fixed length connecting member (8). The anchors are self-deploying upon release (col. 4, lines 24-26). The first anchors face the opposite direction of the second anchors so that the second anchors are only movable in a proximal direction after engagement (Fig. 10). The connector can comprise a metal (col. 3, lines 38-42), which the applicant discloses is a rigid material (p 2, lines 28-30). The connecting member acts as a spring (Fig. 5 vs. Fig.6).

Claims 1, 15-18, and 37-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Pai et al. Pai et al. discloses a device comprising a first distal anchor loop and a second proximal anchor loop (Fig. 8A) connected to each other by a fixed length connecting member (4). The loops may have a cardiac lead passed through them.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3580 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0850.



Thomas Barrett
October 13, 2003



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700